

EXHIBIT 8

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE)
ANTITRUST LITIGATION) No. 11-CV-2509-LHK

VIDEOTAPED DEPOSITION OF MARK FICHTNER
San Francisco, California
Monday, October 15, 2012
Volume I

Reported by:
ASHLEY SOEVYN
CSR No. 12019
Job No. 1541278

PAGES 1 - 233

1 database or in general, just because you're a 10:14:43
2 software engineer, they make you take training that 10:14:45
3 describes: Okay. Here's the kind of information 10:14:48
4 that Intel can collect. They may collect personal 10:14:50
5 information about their employees. They make -- 10:14:54
6 collect information because they have some sort of 10:14:57
7 customer type of site or whatever. Here's how we 10:15:00
8 have to treat that information. 10:15:02

9 And you, as an application writer, have to 10:15:03
10 be aware of how you deal with that information. So 10:15:06
11 if you have access to an employee database, then 10:15:08
12 here's the information, here's how you're allowed to 10:15:11
13 use it. And if it's wages or that sort of thing, 10:15:13
14 that elevates you to a different security level, and 10:15:16
15 you may have to go to additional training and da, da 10:15:20
16 da. 10:15:22

17 Q. I see. Okay. But what you're talking 10:15:23
18 about is Intel employee information within the 10:15:25
19 company? 10:15:27

20 A. Yes, both internal and external. So the 10:15:29
21 class covered both. 10:15:31

22 Q. I see. And would you at times receive 10:15:33
23 information from other companies about wages or 10:15:38
24 other aspects of compensation? 10:15:40

25 A. For their compensation? 10:15:43

1 Q. Yeah. 10:15:47

2 A. I believe so, in a range, yes. 10:16:00

3 Q. Okay. So let's put that aside now because 10:16:02

4 I understand the policy that you talked about and 10:16:07

5 the limitations perhaps. Let's put that aside and 10:16:08

6 go back to your response to the interrogatory on 10:16:15

7 page 9 that we looked at. Interrogatory number 7. 10:16:17

8 So the question I have is, you say you were 10:16:20

9 able to get information about compensation from 10:16:23

10 co-workers or contacts, former co-workers, maybe 10:16:26

11 occasionally through Monster -- so my question is, 10:16:31

12 what did you do with that? 10:16:34

13 A. What did I do with the information? 10:16:38

14 Q. Yeah. How did you use that information 10:16:40

15 about market compensation? 10:16:42

16 A. In general -- so if the information was 10:16:52

17 below what I was making, then it just told me that 10:16:57

18 that wasn't necessarily the job or avenue that I was 10:17:00

19 interested in. If it was above what I was making, 10:17:05

20 then basically two things would happen. 10:17:09

21 Number one, I would probably do a little 10:17:10

22 more research to see what the overall company was 10:17:12

23 doing, and then, you know, I would probably, in 10:17:15

24 casual, bring it up to my manager that, "Oh, by the 10:17:21

25 way, do you know that there's this other opportunity 10:17:24

1 at this other place" and if they wanted to ** -- in 10:17:26
2 general, yeah, I guess that would probably be it for 10:17:32
3 the most part. 10:17:36

4 Q. Uh-huh. And was the idea when you brought 10:17:37
5 that up with the manager that, you know, "I, Mark, 10:17:41
6 might be interested in looking at those 10:17:44
7 opportunities if you are not willing to do something 10:17:46
8 to keep me here"? 10:17:49

9 A. I think it had two purposes. Number one, 10:17:55
10 to ensure that, you know, when -- in a lot of ways, 10:17:57
11 you don't get a lot of feedback about how valued you 10:18:05
12 are at a company except for review periods and that 10:18:10
13 sort of thing. 10:18:14

14 And in some ways, it was to remind my 10:18:14
15 manager of this is the market value for somebody. 10:18:17
16 And I think as you'll notice, a lot of the managers 10:18:19
17 I had were not software engineers and never written 10:18:22
18 software and had really very little idea of what was 10:18:26
19 involved. 10:18:28

20 And so it was a way to somewhat educate my 10:18:28
21 managers on, you know, this is the market and that 10:18:31
22 sort of thing. In terms of, you know, obviously the 10:18:33
23 last three years, I became a little bit more 10:18:40
24 aggressive with trying to negotiate with my groups. 10:18:44

25 But early on, I don't think I was quite as 10:18:47

1 aggressive in terms of "I'm going to leave you, you 10:18:52
2 know, because I've got a better offer" -- unless I 10:18:55
3 actually had an offer. 10:18:59

4 Q. So you said that a number of your managers 10:19:01
5 didn't know anything about writing code. And I sort 10:19:04
6 of take it from your earlier testimony that 10:19:07
7 everybody at Intel knew how to write code. So I 10:19:09
8 guess that's not necessary, huh. 10:19:12

9 A. So in terms of managing large projects that 10:19:17
10 involve software, there's a little bit of a 10:19:20
11 difference in terms of being able to write code. So 10:19:21
12 I've had managers who were experienced in other 10:19:23
13 engineering areas. But in terms of working on 10:19:28
14 software projects, they were a little less 10:19:30
15 experienced. 10:19:32

16 Q. I thought you said a minute ago they didn't 10:19:33
17 know anything about it. Isn't that what you said? 10:19:36

18 A. That would probably be an incorrect 10:19:40
19 statement. They knew less about it than I do. 10:19:43

20 Q. Okay. Are you comfortable now with the 10:19:47
21 testimony? 10:19:51

22 A. Yes, sir. 10:19:51

23 MS. SHAVER: We've been going for about an 10:19:52
24 hour. Can we take a break soon or now or -- 10:19:54

25 MR. HINMAN: Sure. Now is good. 10:19:57

1 THE VIDEOGRAPHER: The time is 10:20 a.m. 10:20:08
2 We are off the record. 10:20:09
3 (Off the record.) 10:31:41
4 THE VIDEOGRAPHER: The time is 10:31 a.m. 10:31:54
5 and we are back on the record. 10:31:57
6 BY MR. HINMAN: 10:32:03
7 Q. So I think before the break you were 10:32:03
8 telling me that sometimes you would take market 10:32:06
9 compensation information that you had picked up to 10:32:11
10 one of your managers while you were at Intel. Right 10:32:15
11 so far? 10:32:19
12 A. Yes. 10:32:20
13 Q. And were you ever able to negotiate a raise 10:32:23
14 or some more stock or some other increased 10:32:29
15 compensation as a result of that? 10:32:36
16 A. So prior to leaving Intel, I had a meeting 10:32:52
17 with my manager's manager and I brought -- I put 10:32:59
18 together a document that justified -- I put together 10:33:04
19 a document that basically highlighted compensation 10:33:16
20 as well as the value of a senior -- senior level 10:33:19
21 engineer. And while talking to him, I was able to 10:33:25
22 get my stock allotment increased. 10:33:32
23 Q. And you say "prior to leaving," prior to 10:33:41
24 leaving the first time or the second time? 10:33:43
25 A. The second time. 10:33:45

1 Q. The second time. And who was that 10:33:48
2 manager? 10:33:49
3 A. Aziz. 10:33:50
4 Q. Is that his first name? 10:33:51
5 A. Yes. 10:33:53
6 Q. What is his last name? 10:33:53
7 A. I don't recall. 10:33:55
8 Q. Who was your manager at that time? 10:33:56
9 A. Randall Goodwin. 10:33:59
10 Q. Randall? 10:34:01
11 A. Goodwin. 10:34:07
12 Q. Goodwin. And Aziz was his manager? 10:34:08
13 A. Yes, sir. 10:34:09
14 Q. Now, you said you had a document that 10:34:12
15 highlighted compensation -- the value of somebody 10:34:14
16 like you, basically, right? 10:34:15
17 A. Yes. 10:34:17
18 Q. What were the sources of the compensation 10:34:18
19 information that you put in your document? 10:34:22
20 A. I believe I used articles that I found on 10:34:28
21 the web. I'm not sure that I used directly a quote 10:34:31
22 from another company. I don't recall. 10:34:38
23 Q. But did you have -- is it fair to say 10:34:40
24 through your contacts and friends and co-workers and 10:34:42
25 former co-workers that you had some general sense of 10:34:48

1 where you had sort of allowed for that kind of 11:57:15
2 communication to happen? Or did they come from 11:57:18
3 somewhere else? Where did they come from? 11:57:27
4 A. I don't know. 11:57:30
5 Q. You don't remember? 11:57:31
6 A. Yeah, I'm not sure that there would be a 11:57:31
7 real obvious place in the e-mail that -- I would 11:57:34
8 have jumped to the body and not necessarily paid 11:57:36
9 attention to where it was coming from unless I 11:57:40
10 followed up on it. 11:57:42
11 Q. Do you remember any of the companies that 11:57:43
12 you received direct serious e-mails from? 11:57:48
13 A. As I said, the Santa Barbara -- possibly 11:57:51
14 into it -- was the one that was firmly in my mind. 11:57:53
15 Q. Why is that one so firmly in your mind? 11:57:56
16 A. Probably because I looked up the area, and 11:57:59
17 I remember looking at the map and seeing the curve 11:58:03
18 of the bay. And I remember having discussions about 11:58:05
19 roughly what they were doing and that sort of thing. 11:58:09
20 So it was just a -- because I responded to it, I 11:58:11
21 think, is more why it seems affixed in my memory 11:58:16
22 than a lot of the other ones. 11:58:20
23 A lot of the other ones, as I said, you 11:58:21
24 read a little bit, you find out something that turns 11:58:23
25 you off about group, the company, or the offer, or 11:58:26

1 whatever, and then you quickly dismiss it. 11:58:28

2 Q. So those -- excuse me. Those 20 or so or 11:58:32

3 maybe less than 20, whatever it is, e-mails, just so 11:58:36

4 I'm clear on this, do you consider those to be cold 11:58:40

5 calls under the current definition that you're using 11:58:44

6	today?	11:58:49
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7 A. Yes. 11:58:50

8	O. Were any of those from any of the other	11:58:53
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9 defendants' companies in this case? 11:58:58

10	A. I don't believe so -- with the possibility	11:59:12
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11 that the Santa Barbara one was Intuit. 11:59:16

12 Q. And you are not able to remember any of the 11:59:23

13 companies that they might have come from -- I just 11:59:25

14 want to make sure you exhausted your recollection. 11:59:28

15 A. I would have remembered from those 11:59:35

16 companies because -- again, with the exception 11:59:36

17 possible of Intuit, just -- yeah, I would have 11:59:38

18	remembered.	11:59:39
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19 Q. Why is that? 11:59:40

20 A. Because they would be more of the caliber 11:59:41

21 of company that I would be looking for. 11:59:44

22 Q. As opposed to what? 11:59:49

23 A. As opposed to a company that either 11:59:51

24 wouldn't have the research budget that these 11:59:55

25 companies have. Wouldn't be able to offer the 11:59:58

1 salary or stock options or some sort of 12:00:05
2 participation and profit sharing. The same type of 12:00:08
3 employees that a company like Intel has. Very 12:00:13
4 intelligent, top of the class, very open to new 12:00:25
5 technologies and different ways of solving problems. 12:00:27
6 I find in some of the smaller companies 12:00:28
7 they just simply don't have the resources either to 12:00:31
8 allow you to look at different ways of solving -- 12:00:35
9 they don't have the resources to compensate quite 12:00:40
10 like these companies can. 12:00:43

11 Q. And when you mention these companies, these 12:00:45
12 defendants, are there particular ones that you have 12:00:48
13 in mind as you're describing them? 12:00:51

14 A. Absolutely. Google, Apple, Adobe, the 12:00:59
15 other few I haven't done as much research with, but 12:01:07
16 they have interesting aspects of their jobs. 12:01:12
17 Lucasfilm and Pixar. Obviously, they are graphics, 12:01:15
18 an area that I've dabbled in that would be very 12:01:22
19 interesting. 12:01:23

20 Q. And there is no allegation in your 12:01:24
21 complaint that any of those companies other than 12:01:40
22 Google was restricted from cold calling into Intel, 12:01:44
23 correct? 12:01:48

24 A. In reference to the agreements, yes. 12:01:51

25 Q. And is it also your understanding that 12:01:55

1 there were periods of time during which even Google 12:02:00
2 was able to cold call to Intel, for example, during 12:02:06
3 your second stint with Intel and also parts of your 12:02:10
4 first? 12:02:19

5 A. Yes. 12:02:20

6 Q. Okay. But nevertheless, you never got a 12:02:20
7 cold call from Google at all -- or from any of the 12:02:22
8 others; is that right? 12:02:25

9 A. Yes. 12:02:26

10 Q. So why do you think that was? 12:02:32

11 MS. SHAVER: Objection, speculation. 12:02:33

12 THE WITNESS: I don't know. 12:02:35

13 BY MR. HINMAN: 12:02:35

14 Q. Were there other big companies with lots of 12:02:35
15 resources and top of the class people and the 12:02:42
16 opportunity for stock or profit sharing out there 12:02:47
17 other than these defendants who might have hired a 12:02:52
18 guy like you? 12:02:54

19 A. Yes. There are other companies. 12:02:56

20 Q. A whole bunch of them, right? 12:03:02

21 A. Yes. 12:03:07

22 Q. Have you ever submitted your resume to a 12:03:21
23 career site for any other company? 12:03:24

24 A. Yes. 12:03:28

25 Q. Can you give me some examples of which 12:03:31

1 related -- there was a group of jobs. 12:05:27

2 Q. Any others? 12:05:33

3 A. I can't answer for certain. 12:05:49

4 Q. Did your friend get that job at Microsoft? 12:05:52

5 A. No. 12:05:54

6 Q. Did it ever come up when somebody was 12:05:55

7 leaving Intel, somebody that you knew -- did you 12:05:58

8 ever talk to them about the offer that they had 12:06:01

9 gotten at the new company before they left? 12:06:05

10 A. I don't recall what details I've discussed 12:06:37

11 with people that have left, whether they were perks 12:06:39

12 or actual cash, I don't recall. 12:06:46

13 Q. When you received e-mails from Monster, 12:06:57

14 whether they were direct or indirect, did they 12:07:00

15 sometimes have compensation information in them? 12:07:06

16 A. What I remember is generally ranges. 12:07:12

17 Q. Okay. 12:07:16

18 A. And the ranges, of course, cut across grade 12:07:17

19 levels and that sort of thing. So you could 12:07:20

20 literally see something 60K to 110K or something 12:07:22

21 like that. 12:07:30

22 Q. Would you need to then follow up to sort of 12:07:31

23 figure out where you would a fall in the range, if 12:07:33

24 you were interested? 12:07:41

25 A. When I see ranges, I believe the assumption 12:07:47

1 that I've made is that you would have to interview 12:07:49
2 in order for them to assess where you would fall in 12:07:51
3 the range. 12:07:54

4 Q. So you would have to get pretty far down 12:07:55
5 the process in order to understand that? 12:07:58

6 A. Yes. 12:08:00

7 Q. So in your experience then, the information 12:08:01
8 that -- the compensation information that you've 12:08:02
9 gotten from either the direct or the indirect 12:08:07
10 e-mails or perhaps the few phone calls that you've 12:08:09
11 had, as far as compensation, it hasn't been all that 12:08:17
12 helpful? Or has it at times? Give me a feel for 12:08:21
13 that. 12:08:25

14 MS. SHAVER: Object as to form. 12:08:42

15 THE WITNESS: I believe it gives me an idea 12:08:48
16 of what the market is like, but not necessarily a 12:08:50
17 very clear idea of what my compensation might be. 12:08:54

18 BY MR. HINMAN: 12:09:01

19 Q. And did you ever -- would you ever pass 12:09:02
20 that information along to any of your friends or 12:09:04
21 colleagues or co-workers, either forwarding the 12:09:07
22 e-mail or talking to them about the market 12:09:09
23 information that you had received? 12:09:12

24 A. Yes. 12:09:17

25 Q. You might say, "Hey, you might be 12:09:17

1 interested in this," or something like that? 12:09:19

2 A. Yes. 12:09:25

3 Q. And so do you agree with that -- do you 12:09:29

4 agree that when employees learn that peers at 12:09:34

5 another company earned more, it gives them an 12:09:38

6 incentive and leverage to seek a raise or to seek 12:09:41

7 employment elsewhere? Do you agree with that 12:09:44

8 statement? 12:09:46

9 A. Yes. 12:09:49

10 Q. And did you ever learn that peers in 12:10:06

11 another company were earning more than you? 12:10:08

12 A. That peers were earning more than me or -- 12:10:50

13 Q. Yes. 12:10:54

14 A. I think the hard problem I'm having with a 12:11:05

15 lot of these questions is that most of the friends 12:11:09

16 that I had that moved were in the first period that 12:11:11

17 I worked at Intel, not so much the second period. 12:11:13

18 So my memory is not quite as clear. 12:11:16

19 I had one friend that moved to a startup 12:11:23

20 out here, but I can't remember if we discussed what 12:11:27

21 she was making, or if it was more than me or less 12:11:29

22 than me. I think probably the most clear is 12:11:33

23 generally when people came back to Intel, you 12:11:37

24 wouldn't know that -- somehow they got the big jump. 12:11:41

25 It was generally kind of -- and whether 12:11:45

1 STATE OF CALIFORNIA) ss:
2 COUNTY OF MARIN)
3

4 I, ASHLEY SOEVYN, CSR No. 12019, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set
8 forth and at which time the witness was administered
9 the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me,
13 and were thereafter transcribed under my direction
14 and supervision, and that the foregoing pages
15 contain a full, true and accurate record of all
16 proceedings and testimony to the best of my skill
17 and ability.

18 I further certify that I am neither counsel for
19 any party to said action, nor am I related to any
20 party to said action, nor am I in any way interested
21 in the outcome thereof.

22 IN THE WITNESS WHEREOF, I have transcribed my
23 name this 22nd day of October, 2012.
24

25 _____
ASHLEY SOEVYN, CSR 12019